

Mayor Cary Bozeman

May 15, 2006

Department of Ecology  
Water Quality Program  
MAY 18 2006

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Municipal Stormwater Western Washington Phase II Comment  
Washington Department of Ecology  
Attn: Bill Moore  
Water Quality Program  
PO Box 47696  
Olympia, WA 98504-7696

RE: City of Bremerton – Comments to Phase II Municipal Stormwater Permit

Dear Mr. Moore:

The City of Bremerton has reviewed the National Pollutant Elimination Discharge System and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Western Washington ("the Permit"). The City recognizes the significant challenges faced by the Department of Ecology in developing and implementing this complex permit, and we support the efforts of the Department in protecting our valuable water resources. The City of Bremerton has spent over \$50 million in recent years on storm and sanitary sewer improvements, which have helped lead to the re-opening of shellfish harvesting in Dyes Inlet.

However, we have numerous and significant concerns with the permit. Although Bremerton has already begun implementing many of the provisions of the Phase II program, compliance with this permit will be difficult and costly. Furthermore, we estimate that the cost of implementing the program as outlined in the draft permit is approximately triple that of implementing the federal program as provided for in our Notice of Intent.

We have outlined below our general comments to several of the primary components of the permit. Following those general comments, we have provided numerous comments to specific permit requirements. Those comments that we submitted regarding the preliminary draft permit are repeated, if they are still relevant.

## **GENERAL COMMENTS**

### **Comparison with Federal Program**

The proposed permit far exceeds the requirements of the Federal NPDES program. Rather than a flexible, locally-tailored program for compliance with the six minimum measures as outlined in the federal program, the permit contains a prescriptive program that must be rigidly documented, monitored and reported. As such, the potential to implement innovative, cost-effective compliance solutions has been removed. In some cases, existing City programs that meet the intent of the federal program will need to be completely modified.

### Monitoring

The federal program does not include water quality monitoring of stormwater outfalls or receiving waters. While we recognize that monitoring is not required in the initial permit term, it is clear that the ultimate intent of the permit will be to sample and conduct water quality monitoring, by virtue of the permit requirement to identify (in the case of a city the size of Bremerton) "one outfall or conveyance where stormwater sampling could be conducted." This exceeds the intent of the federal program.

As was more fully discussed in our comments to the preliminary draft permit, the City of Bremerton has numerous and specific concerns with stormwater monitoring required as part of the permit: 1) The scope of future monitoring is vague, 2) The state already has a receiving water monitoring and management program through the state's 303(d) list, TMDLs, and other programs, 3) In the specific case of Bremerton, the Navy's ENVVEST program has gathered the water quality data needed, 4) The state has already begun the TMDL process for Sinclair and Dyes Inlets, 5) Stormwater monitoring is very difficult to conduct in a defensible manner, particularly for marine receiving waters, and 6) The type and amount of water quality monitoring required to provide accurate and meaningful data is beyond the means of most Phase II communities.

As such, the City of Bremerton does not support water quality monitoring as part of the permit. However, the City does support participation in a comprehensive, regional and integrated assessment of water quality, provided that this is outside of the context of the Permit. Water quality monitoring of various forms, and associated with multiple programs, has been conducted in the Puget Sound basin by numerous jurisdictions for many years. We encourage the Department to work in partnership with local jurisdictions to develop a comprehensive program for monitoring in the future, to include municipal stormwater, as part of an integrated regional and multi-jurisdictional plan, rather than requiring individual jurisdictions to develop yet another expensive, non-defensible, non-integrated monitoring program.

The City also supports compliance monitoring, which is already heavily integrated in the draft permit. However, the level of compliance monitoring in the permit far exceeds any requirements of the federal program, and it will be extremely costly and difficult for Phase II communities to achieve compliance. In contrast to water quality monitoring, however, compliance monitoring as specified in the permit can at least in general be consistently interpreted and measured.

### Requirement to Adopt the Stormwater Management Manual for Western Washington

The permit does not explicitly require that local jurisdictions adopt the Stormwater Management Manual for Western Washington (the Manual), but it will be impractical to comply with the permit without doing so. While the permit suggests that "certain requirements (for addressing runoff) may be tailored to local circumstances", it is our understanding that the Department has neither the staff nor resources to review any technical standards other than the DOE Manual or an approved Phase I community manual. If the Department is requiring adoption of the Manual, it should explicitly say so in the permit.

In any case, to our knowledge it has not been demonstrated that the level of control specified by the DOE Manual is necessary to meet MEP.

In addition, we have significant concerns with the high cost of implementing the Manual, particularly in the highly urbanized sections of the City of Bremerton. In particular, defining the runoff control "pre-developed condition" as forested land cover is extraordinarily costly. The post-1985 40% urbanized exemption is impractical and vague in a highly modified and urbanized area such as Bremerton. Further, we share the concern of numerous other Phase II communities, and the Association of Washington Cities, that the requirement to mitigate stormwater flow to the pre-developed forested condition may constitute a "taking" when interpreted under established case law, leaving Phase II communities vulnerable to litigation.

#### General Permit Layout

For clarity, we suggest that General Permit Conditions appear prior to Special Conditions in the permit. The glossary should appear at the beginning of the permit. The concept of Appendices to the permit should be abandoned if possible. Appendix 1 should be incorporated into the body of the permit, or, if it is the intent of the Department to require adopting the Manual, it should be eliminated entirely. Appendices 5 and 6 seem overly specific and out of context. Those documents should be incorporated into the permit or included in the Manual.

#### SPECIFIC COMMENTS

Page 5, Line 23 and 31 – The definitions of, and distinction between, "regulated small MS4s" and "small MS4s" throughout section S1, is confusing. For example, the operators listed in the paragraph beginning on page 5 line 31 are defined in that paragraph as "small MS4s". However, they are defined later (page 7, line 11) as "regulated small MS4s". Both of these definitions appear to be used interchangeably with "secondary permittee". Additional definition regarding what constitutes other regulated MS4s is required, particularly with respect to publicly-owned school districts, libraries, and similar entities. For universities, are satellite locations, such as branches, off-site classrooms, administrative offices, etc. regulated? However these "secondary" permittees are defined, we are very concerned with the amount of administration and coordination with them that will be expected of "primary" permittees.

Page 6 Line 13 – Portions of Bremerton's MS4 are shared with a federal military installation or the Washington State Department of Transportation, and in some cases, the outfalls are situated within the installation, or are under the control of WSDOT. While we recognize that military bases are exempt from these permit requirements, we are concerned that several

permit provisions, particularly monitoring requirements, will be difficult or impossible to comply with for those portions of the MS4 outside of our direct control.

Page 8, Line 14 – Many permittees will elect to team with neighboring permittees to jointly comply with one or more permit requirements at a later date, during the implementation phase of the permit. Requiring resubmittal of the NOI would be burdensome, and would tend to inhibit a collaborative approach. A simple administrative notification to the Department should be allowed in those instances

Page 10, Line 12 – It seems unlikely that fire-fighting wastewater would ever be identified as a significant source of pollutants. Further, it's difficult to envision a practical means of addressing the issue. This section should be deleted.

Page 11, Line 5 – The reference to RCW 90.48.520 appears to be inappropriate for the permit, since that statute addresses wastewater, not municipal stormwater.

Page 11, Line 8 - This permit does not allow violating the state's water quality standards under WAC 173-201A. Can it be assumed that it is not the Department's intent to require that standards be met at each MS4 outfall? According to the permit fact sheet, the permit intent is that compliance with MEP and AKART are met if the requirements of the permit are met; however, that is not explicitly stated in this section. Is it presumed that the water quality standards under WAC 173-201A are also met?

Page 11, Line 22 and Page 41, Line 18 – This requirement is far too open-ended. Allowing the Department to modify the permit based on unknown future circumstances removes all ability for permittees to plan and budget for compliance during the permit term.

Page 11, Line 33 – This makes a reference to Section S5.C.6. That section doesn't exist.

Page 12, Line 25 – This section states that SWMPs described in individual applications (notices of intent?) are superseded by the permit. This contradicts the requirement in the following paragraph that states that permittees must continue to implement those earlier SWMPs. That requirement should be deleted.

Page 12, Line 33 – The reference to "Within the limits of state and federal law" suggests that some mandatory program components are outside those limits. A similar statement appears on Page 19, Line 15. Either those components should be eliminated, or the Department should clarify the intent of this reference.

Page 12, Line 18 and Appendix 3, Part II – Tracking and reporting program expenditures is an unnecessary administrative task, and places additional burdens on permittees. The only conceivable uses of this data would appear to be to allow the Department to reduce the scope of the program in the future if the data demonstrates excessive implementation costs (which seems unlikely) or to use expenditures as a measure of program effectiveness (which is an invalid means of monitoring compliance). As such, this requirement should be deleted.

Page 13, Line 4 – We support a strong public education program. However, and although we appreciate elimination of the requirement to reach 100% of the target audience in establishing a public education program, the requirements of the program remain unrealistic. In particular, “measuring regular adoption of behaviors” requires an expensive, statistically verifiable, and detailed survey. Making good faith efforts to ensure information is provided to target audiences can be documented and measured, and that is where scarce resources should be devoted, rather than to an expensive measurement of the results. Bremerton, along with other jurisdictions in Kitsap County, has been participating in regional stormwater outreach for several years. Credit should be given for existing programs. The Department needs to be sure that what is required of Phase II communities for public information is practical, beneficial, and achievable.

Page 15, Line 6 – The requirement to fully implement an illicit discharge program three years from the effective date of the Permit contradicts the timelines for program components contained in the following section (four years to complete mapping, for example). The requirement for full implementation should be 180 days prior to permit expiration, consistent with the requirement on page 17, line 11.

Page 15, Line 20 – The intent of mapping “all connections to the municipal separate storm sewer” is unclear, and is unnecessary. Every tax parcel in the City currently discharges in some fashion to the MS4, either directly by a pipe or indirectly via overland flow. There is no mechanism for “authorizing or allowing” these connections, or tracking them for mapping purposes.

Page 17, Line 28 – We appreciate the language change from “equivalent” methodology as contained in the preliminary draft permit to “comparable” methodology as stated in the draft permit.

Page 19, Line 30 – See previous comments regarding the requirement to adopt the DOE Manual.

Page 22, Line 1 – The responsibility for inspection of private facilities throughout the maintenance and operations provisions is unclear. Does the responsibility lie with the municipality or the property owner?

Page 22, Line 3 – Annual inspection of all privately owned catch basins is overly burdensome. The requirement should be changed to “at least once before the end of the permit term”, consistent with the requirement for municipally-owned catch basins (Page 23, Line 36).

Page 22, Line 32 – Training regarding implementation of the stormwater runoff control program is required one year after permit issuance, which is one year prior to implementation of the program. It makes little sense to begin training before the program is completely developed. The requirement for training should be changed to two years after permit issuance.

Page 23, Line 18 – Is the intent for maintenance compliance two years for activities that require capital expenditures greater than \$25,000, rather than less than \$25,000?

Page 34, Line 26 – See previous general comments and concerns regarding monitoring. The selection of one outfall seems arbitrary. In addition, the scope of the monitoring program as outlined here (two suitable questions, problem statements, and hypotheses to be tested) is vague and subject to wildly varying interpretations, and is akin to participation in a research project. This is inappropriate for a permit.

Page 35, Line 14 – BMP effectiveness monitoring is an unreasonable expectation of individual permittees. If there is not ample technical literature with respect to the performance of stormwater BMPs, then any necessary research should be conducted within the context of a state-managed program, not as a permit requirement. This monitoring requirement should be deleted.

Page 47, Line 28 – Page 47, Line 28 – The definition of “qualified personnel” references professional training. There are numerous references throughout the permit regarding training. It is our hope that the Department will assist in making this training available, particularly if it must be conducted by a professional. Will certification programs be established? The topics are such that training is not available through traditional sources.

Page 48 Line 21 - Bremerton has both combined and separate sewer systems. The City has 10 major stormwater outfalls that also serve a combined sewer. Combined sewers are not regulated as an MS4 under this permit. However, under the provisions of S1.A.1, the permit is meant to cover the entire incorporated area of the city. Is it the Department's intent to exclude those drainage areas that contribute to combined outfalls? Or rather, is it expected that we would take an approach that essentially “ignores” the combined sewer component? This question is particularly relevant with respect to monitoring.

Appendix I, page 3 – As defined, gravel roads and packed earthen materials are correctly considered to be impervious surfaces. However, the reference on page 2 states that paving gravel shoulders is considered a new impervious surface. This is a contradiction. Further, requiring that newly-paved shoulders include mitigation for stormwater quantity and quality will greatly inhibit the ability of Phase II communities to construct these important safety projects, particularly given the space constraints in existing right-of-way that are inherent in these types of projects.

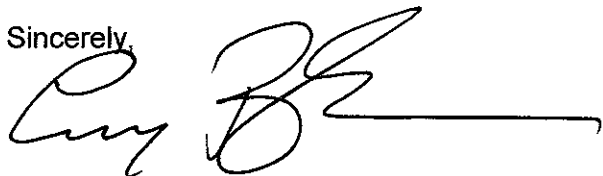
Appendix 1, page 2 – Many existing roadways in Bremerton consist of an aged chip seal or thin seal coat over an existing asphalt roadway. It is common practice to maintain these roadways by installing an asphalt overlay. As written, the permit provision would consider this a new impervious surface, although that is not likely the Department's intent. This should be clarified to state that overlaying a chip seal only where there is not an underlying impervious surface would constitute a new impervious surface.

Appendix 1, pages 7-8 – Although the permit requirements clearly state that only sites that disturb one acre or greater are subject to the technical requirements of Appendix 1, the flow charts that are contained in the appendix make no reference to that size threshold, implying that any new site that adds greater than 5,000 square feet of new impervious surface, or any redevelopment that disturbs an area greater than 7,000 square feet, are subject to the

requirements, regardless of size. This needs to be clarified by including the one acre threshold in the flow charts.

The City of Bremerton appreciates the opportunity to provide these comments. If you have any questions, please call Managing Engineer Luke Korpi of my staff at 360-473-5342.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Bozeman', followed by a long horizontal line.

Cary Bozeman  
Mayor

bcc: Phil Williams, Director, Department of Public Works and Utilities  
Mike Mecham  
Luke Korpi

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